

TERRY MINER

The Board has considered the record and adopts the stipulations contained in the Award of the Administrative Law Judge. Additionally, the parties agreed at oral argument before the Board that, as the Administrative Law Judge made no determination regarding the merits of the matter but merely ruled upon the bankruptcy stay, it would be appropriate for this matter to be remanded back to the Administrative Law Judge for a determination

of the remaining issues should the Board determine that the ruling by the Administrative Law Judge regarding the bankruptcy stay should be reversed.

ISSUES

Does the Kansas Workers Compensation Division have jurisdiction or authority to hear this claim after claimant's claim against the respondent and its insurance carrier has been disallowed by the United States Bankruptcy Court?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary record filed herein, the Board finds that the Award of the Administrative Law Judge should be affirmed.

The issues dealing with claimant's injury and what, if any, care and treatment or permanent impairment he may be entitled to will not be discussed in this award. Claimant's claim was stayed when, on November 7, 2000, TIC United Corporation, of which respondent is a division, filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code. Unfortunately, the insurance company for respondent, Reliance National Indemnity Company, had also filed a petition in bankruptcy.

The United States Bankruptcy Court for the Northern District of Texas entertained a motion for injunctive relief, resulting in an Order on March 19, 2001, granting injunctive relief until the completion of certain Alternative Dispute Resolution (ADR) Procedures. The injunction applied to all damage claimants, including the claimant in this matter. The Order stated, in part, that the damage claimants:

[T]ogether with their agents, officers, directors and employees, and all those acting in concert with them or at their direction (including but not limited to individuals at any workers compensation commission acting on behalf of the Defendants), are hereby enjoined from continuing in any form or fashion against the Debtor [TIC United Corp.]

There are also established by the United States Bankruptcy Court certain ADR Procedures involving certain mandatory actions on the part of any damage claimant. The Order went on to require:

[T]hat no Damage Claimant . . . shall be entitled a hearing on a motion to lift the automatic stay until and unless such Damage Claimant has (i) fulfilled the applicable requirements of the ADR Procedure, including the offer and exchange procedure, the mediation procedure, . . . and the bankruptcy court conference/motion to lift stay procedure, and (ii) filed a Certificate of Completion with the Clerk of the United States Bankruptcy Court for the Northern District of Texas.

The court determined that once these procedures were followed, the court would entertain an order which:

[T]o an extent that a workers' compensation claim cannot be resolved through the ADR Procedure, and the automatic stay is lifted, such workers' compensation claims will be litigated in accordance with any rules and procedures governed by the appropriate state workers compensation board or agency

In this matter, at the regular hearing of March 13, 2002, the Administrative Law Judge refused to continue with the proceedings, advising claimant that he would have to go through the ADR procedures before returning to the workers compensation court.

Even though claimant was advised of the appropriate procedures to follow, neither the Confirmation of Loss form nor the Proof of Claim was filed with the Clerk of the Bankruptcy Court on or before the March 18, 2001 deadline.

The Bankruptcy Court went on to rule that:

Paragraph 8(a) of the ADR Procedure provides that the failure to timely submit a Confirmation of Loss form (i) disqualifies the party from participation in the ADR process, (ii) prohibits the party from obtaining relief from the automatic stay and (iii) allows the Court to estimate the claim for purposes of allowance pursuant to Section 502 of the Bankruptcy Code.

As noted above, claimant failed to file any documentation with the United States Bankruptcy Court. As a result, on September 14, 2001, the court concluded that "all claims listed on **Exhibit A and Exhibit B**, attached to this Order, are disallowed in their entirety." Claimant's name was listed in the attached exhibits, with his claim being disallowed in its entirety.

The Administrative Law Judge ruled that, as the United States Bankruptcy Court for the Northern District of Texas had jurisdiction over this matter, the Kansas Workers Compensation Division is without jurisdiction to proceed with the litigation of this claim.

The jurisdiction of the Bankruptcy Court is governed by 28 U.S.C. §§ 157 and 1334. Pursuant to this authority, the bankruptcy courts have jurisdiction of all cases filed pursuant to the Bankruptcy Code as well as all civil proceedings arising under Title 11 or arising in or related to cases under Title 11. "The test for determining whether a civil proceeding is related to the bankruptcy is whether the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy."¹

¹ *In re Hall*, 30 B.R. 799, 802 (M.D.Tenn.1983).

The Kansas Workers Compensation Act allows liability against the Kansas Workers Compensation Fund (Fund):

If an employer has no insurance to secure the payment of compensation, as provided in subsection (b) (1) of K.S.A. 44-532 and amendments thereto, and such employer is financially unable to pay compensation to an injured worker as required by the workers compensation act, or such employer cannot be located and required to pay such compensation²

If any of the above circumstances exists, then the injured worker may apply to the Director for an award of compensation to be paid from the Fund. In this instance, the Commissioner of Insurance, acting in her capacity as administrator of the Fund, is granted an action against the employer for recovery of any amounts paid from the Fund.³ Therefore, any action by claimant against the Fund could conceivably have an effect on the estate being administered in bankruptcy.

In *Celotex Corporation*,⁴ the United States Supreme Court ruled that the execution of a supersedeas bond, even though it did not directly involve the bankrupt company, Celotex Corporation (Celotex), was at least a question “related to” Celotex’s bankruptcy. The Bankruptcy Court issued an injunction staying all proceedings involving Celotex, including the execution of the bond against a third party, Northbrook Property and Casualty Insurance Company. The Supreme Court, quoting its earlier decision in *GTE Sylvania, Inc.*,⁵ said “that persons subject to an injunctive order issued by a court with jurisdiction are expected to obey that decree until it is modified or reversed, even if they have proper grounds to object to the order.” In *Celotex*, the court ruled that the respondents should have challenged the injunction in Bankruptcy Court rather than collaterally attacking the injunction before the Supreme Court. Here, claimant was required to pursue his administrative remedies with the Bankruptcy Court. Had claimant proceeded with the bankruptcy requirements, the Bankruptcy Court’s Order of March 19, 2001 (entered on March 23, 2001), which stated “ORDERED to the extent that a workers’ compensation claim cannot be resolved through the ADR Procedure, and the automatic stay is lifted, such workers compensation claims will be litigated in accordance with any rules and procedures governed by the appropriate state workers compensation board or agency,” would have allowed for the litigation of his workers’ compensation claim.

² K.S.A. 44-532a(a) (Furse 1993).

³ K.S.A. 44-532a(b) (Furse 1993).

⁴ *Celotex Corporation v. Edwards*, 514 U.S. 300, 115 S.Ct. 1493 (Apr. 19, 1995).

⁵ *GTE Sylvania, Inc., v. Consumers Union of the United States, Inc.*, 445 U.S. 375, 386, 100 S.Ct. 1194, 63 L.Ed.2d 467 (Mar. 19, 1980).

The Board recognizes that the public policy of involving the Fund is to compensate claimants in situations where respondents and/or their insurance carriers are unable to pay the compensation which is due and owing after a work-related injury. The reason behind this is to protect claimants from financially unsound respondents or those who neglect or refuse to provide workers' compensation coverage. Nevertheless, the rule of law under the United States Bankruptcy Code applies. Claimants who wish to proceed under these circumstances are required to file their claims in bankruptcy court and obtain an order lifting the stay, thus allowing them to proceed in their appropriate workers' compensation venues. Regrettably, that was not done in this case, with the end result being claimant's claim in the bankruptcy court was "disallowed" in its entirety. The Workers Compensation Division for the State of Kansas finds itself without jurisdiction to proceed in this matter, and claimant's request is, therefore, denied.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Jon L. Frobish dated March 10, 2003, denying claimant benefits against the Kansas Workers Compensation Fund, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of September 2003.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Carlton W. Kennard, Attorney for Claimant
Garry W. Lassman, Attorney for Respondent
E. L. Lee Kinch, Attorney for Fund
Jon L. Frobish, Administrative Law Judge
Paula S. Greathouse, Director